

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Knight Analyst: Jeani Brent Bill Number: SB 995
Related Bills: See Legislative History Telephone: 845-3410 Introduced Date: 02/26/1999
Attorney: Doug Bramhall Sponsor: _____

SUBJECT: Rural Economic Opportunity Area/Tax Incentives Available to Enterprise Zone Shall Apply

SUMMARY

Under the Government Code, this bill would require the Trade and Commerce Agency (TCA) to designate one rural economic opportunity area.

Under the Personal Income Tax Law and the Bank and Corporation Tax Law, this bill would provide that any tax incentive available in an enterprise zone would apply in a rural economic opportunity area designated under this bill.

EFFECTIVE DATE

This bill would be effective on January 1, 2000; however, the bill states that the tax incentives apply to taxable or income years beginning on or after January 1, 1999.

LEGISLATIVE HISTORY

AB 1217, as introduced February 28, 1997. The bill was amended several times, finally to provide for the designation of the Targeted Tax Area and was enacted (Stats. 1997, Ch. 602)

PROGRAM HISTORY/BACKGROUND

California has four types of economic development areas that have similar tax incentives:

- Enterprise Zones,
- Local Agency Military Base Recovery Areas (LAMBRA),
- Targeted Tax Area (TTA), and
- Manufacturing Enhancement Areas (MEA)

The following table shows the incentives available to each of the economic development areas.

Types of Incentives	EZ	LAMBRA	TTA	MEA
Sales or Use Tax Credit	X	X	X	
Hiring Credit	X	X	X	X
Employee Wage Credit	X			
Business Expense Deduction	X	X	X	
Net Interest Deduction	X			
Net Operating Loss	X	X	X	

Board Position:

____ S ____ NA ____ NP
____ SA ____ O ____ NAR
____ N ____ OUA ____ X PENDING

Department Director

Date

Gerald Goldberg

4/26/1999

SPECIFIC FINDINGS

Under the Government Code, existing state law allows the governing body of a city or county to apply for designation as an enterprise zone. Using specified criteria, the Trade and Commerce Agency (TCA) designates enterprise zones from the applications received from the governing bodies. Enterprise zones are designated for 15 years (except enterprise zones meeting certain criteria may be extended to 20 years), and TCA has designated each of the 39 enterprise zones authorized under existing law. When an enterprise zone expires, TCA is authorized to designate another in its place (or redesignate the existing zone) to maintain a total of 39 enterprise zones. TCA may approve the geographic expansion of enterprise zones up to 15% in size and, for certain small enterprise zones, up to 20% in size.

TCA may audit enterprise zone programs and determine a result of superior, pass, or fail, and may dedesignate failing programs. Any business located in a dedesignated zone that has elected to avail itself of any state tax incentive for any taxable or income year prior to dedesignation may continue to avail itself of those tax incentives for a period equal to the remaining life of the enterprise zone, provided the business otherwise is still eligible for those incentives. Once an enterprise zone is dedesignated, TCA may designate another enterprise zone in its place to maintain a total of 39 enterprise zones, even though taxpayers in the dedesignated zone may continue to use the tax incentives that the taxpayers qualified for prior to dedesignation.

Under the Revenue and Taxation Code, existing state law provides special tax incentives for taxpayers conducting business activities within an enterprise zone. These incentives include a sales or use tax credit, hiring credit, business expense deduction, special net operating loss treatment, and net interest deduction. In addition, a wage credit may be claimed by specified employees of businesses operating within an enterprise zone. See attachment A for a detailed discussion of each tax incentive.

This bill would require the Trade and Commerce Agency (TCA) to designate one rural economic opportunity area. The area shall include areas of the City of Ridgecrest, California City, and the Mojave Public Utility District and connecting corridors. The designation would be binding for a period of 15 years. In addition, this bill would provide that any tax incentive available in an enterprise zone would apply in a rural economic opportunity area designated under this bill.

Policy Consideration

This bill would become effective on January 1, 2000. The rural economic opportunity area could not be designated until after that date. Yet the bill provides that tax incentives would be operative retroactively to taxable or income years beginning on or after January 1, 1999. This has the effect of rewarding prior behavior that occurred prior to the existence of the zone rather than providing an incentive for future behavior, a fundamental principle with respect to the enactment of business incentives.

Implementation Considerations

The provisions in this bill would allow the same tax benefits to businesses operating in a rural economic opportunity area as those available to taxpayers operating in enterprise zones. It is unclear whether the author also intends that the restrictions and requirements of enterprise zone operation also apply. For instance, the enterprise zone tax incentives specifically require qualified taxpayers to be engaged in a trade or business located in an enterprise zone designated under Government Code Chapter 12.8, but the rural economic opportunity area would be designated under Government Code Chapter 12.85. Also, other criteria in the enterprise zone tax incentives require specific activities within an enterprise zone; however, these activities may not be compatible with the rural zone location. Therefore, in order to avoid disputes between taxpayers and the department, this bill should be amended to provide stand-alone language providing both tax incentives and qualifying criteria, if any. Department staff is available to work with the author's staff to resolve this concern.

If this bill is amended to resolve these implementation considerations, implementing this bill would be accomplished during the normal annual update.

FISCAL IMPACT

Departmental Costs

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

Tax Revenue Estimate

The revenue loss from this bill is estimated as follows:

Estimated Revenue Impact of SB 995 Effective After December 31, 1998 (In Millions)		
1999-0	2000-1	2001-2
Negligible *	Minor Loss **	(\$1)

* Less than \$250,000

** Less than \$500,000

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Estimate Discussion

Revenue losses under the Personal Income Tax Law and the Bank and Corporation Tax Law would primarily depend on the number of businesses in the rural economic opportunity area that would purchase qualified property subject to the sales tax, the amount of wages paid to qualified employees, and the relevant state tax liabilities of employers claiming tax benefits.

Because the effectiveness of a rural economic opportunity tax area is unknown and the potential exists for significant businesses to locate in such an area, the average revenue loss of \$1 million per area per year has

been used. It is not known what, where, or when plans or development will begin. It is anticipated that revenue losses would most likely be below the average in the first years of designation. Allowance is made in future years for businesses that might start up.

BOARD POSITION

Pending.

Attachment A
SB 995
As Introduced February 26, 1999

ENTERPRISE ZONE TAX INCENTIVES

Sales or Use Tax Credit

The sales or use tax credit is allowed for an amount equal to the sales or use taxes paid on the purchase of qualified machinery purchased for exclusive use in an enterprise zone. The amount of the credit is limited to the tax attributable to enterprise zone income. Qualified property is defined as follows:

- Machinery and machinery parts used for:
 - manufacturing, processing, assembling, or fabricating;
 - producing renewable energy resources; or
 - air or water pollution control mechanisms.
- Data processing and communication equipment.
- Certain motion picture manufacturing equipment.

In addition, qualified property must be purchased and placed in service before the enterprise zone designation expires. The maximum value of property that may be eligible for the enterprise zone sales or use tax credit is \$1 million for individuals and \$20 million for corporations.

Hiring Credit

A business located in an enterprise zone may reduce tax by a percentage of wages paid to qualified employees. A qualified employee must be hired after the area is designated as an enterprise zone and meet certain other criteria. At least 90% of the qualified employee's work must be directly related to a trade or business located in the enterprise zone and at least 50% must be performed inside the enterprise zone. The business may claim up to 50% of the wages paid to a qualified employee as a credit against tax imposed on enterprise zone income. The credit is based on the lesser of the actual hourly wage paid or 150% of the current minimum hourly wage (under special circumstances for the Long Beach enterprise zone, the maximum is 202% of the minimum wage). The amount of the credit must be reduced by any other federal or state jobs tax credits and the taxpayer's deduction for ordinary and necessary trade or business expenses must be reduced by the amount of the hiring credit.

Business Expense Deduction

A business located in an enterprise zone may elect to deduct as a business expense a specified amount of the cost of qualified property purchased for exclusive use in the enterprise zone. The deduction is allowed in the taxable or income year in which the taxpayer places the qualified property in service. The basis of the property must be reduced by the amount of the deduction. The maximum deduction for all qualified property is the lesser of 40% of the cost or the following:

If the property was placed in service:

Months after designation	Maximum deduction
0 to 24	\$40,000
25 to 48	30,000
48 and over	20,000

Net Operating Loss Deduction

A business located in an enterprise zone may elect to carry over 100% of the enterprise zone net operating losses (NOLs) to deduct from enterprise zone income of future years. The election must be made on the original return for the year of the loss. The NOL carryover is determined by computing the business loss that results from business activity in the enterprise zone.

Net Interest Deduction

A deduction from income is allowed for the amount of net interest earned on loans made to a trade or business located in an enterprise zone. Net interest is defined as the full amount of the interest less any direct expenses (e.g., commission paid) incurred in making the loan. The loan must be used solely for business activities within the enterprise zone and the lender may not have equity or other ownership interest in the enterprise zone trade or business.

Employee Wage Credit

Certain disadvantaged individuals are allowed a credit for wages received from an enterprise zone business. Public employees are not eligible for the credit. The amount of the credit is 5% of "qualified wages," defined as wages subject to federal unemployment insurance. For each dollar of income received by the taxpayer in excess of qualified wages, the credit is reduced by nine cents. The credit is not refundable and cannot be carried forward. The amount of the credit is limited to the amount of tax that would be imposed on income from employment in the enterprise zone, computed as though that income represented the taxpayer's entire taxable income.

Apportioning

For businesses operating inside and outside an enterprise zone, the amount of credit or net operating loss deduction that may be claimed is limited by the amount of tax on income attributable to the enterprise zone. Income is first apportioned to California using the same formula as that used by all businesses that operate inside and outside the state (property, payroll, a double-weighted sales factor). This income is further apportioned to the enterprise zone using a two-factor formula based on the property and payroll of the business.